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No. 96-1494

In the Supreme Court of the United States

OCTOBER TERM, 1996

ALCAN ALUMINUM CORPORATION, PETITIONER

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN RESPONSE TO PETITIONER'S SUPPLEMENTAL BRIEF ON NEW AUTHORITY

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3 pp

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On May 21, 1997, petitioner filed a supplemental brief addressing *Licciardi* v. *Murphy Oil USA, Inc.*, 111 F.3d 396 (5th Cir. 1997) (Supp. Br. App. A1-A5). *Licciardi* presents no conflict with the court of appeals' construction of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9607(a), in this case. *Licciardi* correctly holds that a defendant is liable for clean-up costs if it is responsible for disposing of a hazardous substance at a site from which a release or threatened release has occurred, and "the release or threatened release must have caused the plaintiff to incur response costs." Supp. Br. App. A3. That holding is consistent with the plain language of Section 9607(a), as well as with the court of appeals' ruling here. See

Pet. App. A29 (the government "must simply prove that the defendant's hazardous substances were deposited at the site from which there was a release and that the *release* caused the incurrence of response costs").

Licciardi, moreover, involves particular factual circumstances that are not presented in this case. First, *Licciardi* involved a release by a single responsible party and its impact on adjacent property. Supp. Br. App. A3-A4. The present case, by contrast, addressed the liability rules governing the release of commingled wastes disposed of by multiple generators. Second, *Licciardi* involves litigation brought by a private party, rather than an action brought by the government to recover its response costs.

Accordingly, for the reasons discussed herein and on pages 10-12 of our brief in opposition, petitioner's claim of a conflict in the circuits is in error.

Respectfully submitted.

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JUNE 1997